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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

CORY SPENCER, an individual;  
DIANA MILENA REED, an  
individual; and COASTAL  
PROTECTION RANGERS, INC., a  
California non-profit public benefit  
corporation,

CASE NO. 2:16-cv-02129-SJO (RAOx)  
**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT  
BLAKEMAN'S MOTION FOR COSTS**

Case No. 2:16-cv-02129-SJO (RAOx)

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION  
TO DEFENDANT BLAKEMAN'S MOTION FOR COSTS

1  
2 Plaintiffs,

3 v.

4 LUNADA BAY BOYS; THE  
5 INDIVIDUAL MEMBERS OF THE  
6 LUNADA BAY BOYS, including but  
7 not limited to SANG LEE, BRANT  
8 BLAKEMAN, ALAN JOHNSTON  
9 AKA JALIAN JOHNSTON,  
10 MICHAEL RAE PAPAYANS,  
11 ANGELO FERRARA, FRANK  
12 FERRARA, CHARLIE FERRARA,  
and N. F.; CITY OF PALOS VERDES  
ESTATES; CHIEF OF POLICE JEFF  
KEPLEY, in his representative  
capacity; and DOES 1-10,

13 Defendants.  
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**Date:** April 9, 2018  
**Time:** 10:00 a.m.  
**Ctrm.:** 10C

Complaint Filed: March 29, 2016

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**I. INTRODUCTION**

This Court should deny Defendant Blakeman's Motion for Costs for several reasons. As a preliminary matter, the motion is untimely and procedurally improper and should be dismissed on that basis alone. Even if considered, however, the Court should not award costs to Defendant Blakeman because he is not a prevailing party and the circumstances of this case would make an award of costs to him unfair and inequitable. Finally, even if the Court decides to award costs to Defendant Blakeman, the amount should be significantly reduced from what he requests because he seeks costs that are not recoverable even by a prevailing party.

**II. RELEVANT PROCEDURAL HISTORY**

**A. The Court Found That It Had Subject Matter Jurisdiction Over All Of Plaintiffs' Claims, But Abstained From Hearing The Coastal Act Claim**

On March 29, 2016, Plaintiffs Cory Spencer, Diana Milena Reed, and the Coastal Protection Rangers, Inc. ("Plaintiffs") filed this action against the Lunada Bay Boys ("LBB"); the individual members of the Lunada Bay Boys, including Sang Lee, Brant Blakeman, Alan Johnston, Michael Rae Papayans, Angelo Ferrara, Frank Ferrara, Charlie Ferrara, and N.F. (the "Individual Defendants"), the City of Palos Verdes Estates (the "City"), and Chief of Police Jeff Kepley. (Dkt. 1.) Plaintiffs asserted eight causes of action: (1) violation of the Bane Act, California Civil Code section 52.1(b) against LBB and Individual Defendants ("Bane Act Claim"); (2) public nuisance pursuant to California Civil Code sections 3479 and 3480 against LBB and Individual Defendants ("Nuisance Claim"); (3) violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, pursuant to 42 U.S.C. section 1983, against the City and Chief Kepley (together "City Defendants") ("Equal Protection Claim"); (4) violation of the Privileges and Immunities Clause of Article IV of the United States Constitution, pursuant to Section 1983, against City Defendants ("P&I Claim"); (5) violations of various provisions of the California Coastal Act against all Defendants ("Coastal

1 Act Claim"); (6) assault against LBB and Individual Defendants ("Assault Claim");  
2 (7) battery against LBB and Individual Defendants ("Battery Claim"); and (8)  
3 negligence against LBB and the Individual Defendants ("Negligence Claim").  
4 (Dkt. 39-2, ¶¶ 43-106.) Plaintiffs asserted that the Court had subject matter  
5 jurisdiction over Individual Defendants under 28 U.S.C. section 1333 (admiralty or  
6 maritime jurisdiction), Article III, section 2 of the United States Constitution, and 28  
7 U.S.C. section 1367 (supplemental jurisdiction). (*Id.* at ¶¶ 11-12.)

8 On June 3, 2016, City Defendants filed a Motion to Dismiss ("City Motion"),  
9 asking the Court to dismiss the three causes of action brought against them: (1) the  
10 Equal Protection Claim; (2) the P&I Claim; and (3) the Coastal Act Claim.  
11 (Dkt. 30.) On July 11, 2016, the Court denied the City Motion as to the Equal  
12 Protection Claim. (Dkt. 84.) The Court granted the City Motion with respect to the  
13 P&I Claim. (*Id.*) Lastly, based on *Burford v. Sun Oil Company*, 319 U.S. 315  
14 (1943), the Court declined supplemental jurisdiction as to City Defendants and  
15 abstained from hearing the Coastal Act Claim, stating it raised complex or  
16 controversial matters of State law. (*Id.*)

17 Also in June 2016, Individual Defendants Johnston, Blakeman, Papayans,  
18 Angelo Ferrara, and N.F. filed motions to dismiss for lack of subject matter  
19 jurisdiction. (Dkts. 41-43, 72.) The Court denied the motions, finding that it had  
20 admiralty jurisdiction over Plaintiffs' tort claims against Individual Defendants.  
21 (Dkt. 88, pp. 5-8.) The Court also ruled that, even if it lacked admiralty jurisdiction,  
22 it nevertheless had supplemental jurisdiction over Plaintiffs' state law claims. (*Id.* at  
23 pp. 8-9.)

24 **B. Plaintiffs Initiated A State Court Action To Address Their Coastal Act**  
25 **Claims And The State Court Stayed The Case Pending Resolution Of**  
26 **The Federal Case**

27 On August 4, 2016, after this Court declined to hear Plaintiffs' Coastal Act  
28 Claims, Plaintiffs filed a state court lawsuit against all Defendants on the Coastal  
Act Claims. (Pooley Dec., ¶ 4.) On September 7, 2018, the state court stayed the



1 state court action, pending the outcome of this case. (*Id.* at ¶ 5.)

2 **C. This Court Granted Summary Judgment To The City Defendants,**  
3 **Determined It No Longer Had Admiralty Jurisdiction Over Plaintiffs'**  
4 **State Law Claims, And Declined To Exercise Supplemental Jurisdiction**

5 In July 2017, City Defendants and Individual Defendants filed motions for  
6 summary judgment. (Dkt. 268, 274, 278, 279, 283-286.) On February 12, 2018, the  
7 Court granted the City Defendants' Motion for Summary Judgment. (Dkt. 545.) At  
8 the same time, the Court revisited the issue of its jurisdiction over Individual  
9 Defendants. The Court recognized the evolution of the case, including the denial of  
10 class certification and a narrowing of issues and evidence presented, and concluded

11 that it no longer had admiralty jurisdiction over Plaintiffs' state law claims.  
12 (Dkt. 545, p. 18.) The Court found it a "more difficult question" as to whether it  
13 should decline to exercise supplemental jurisdiction over Plaintiffs' state law claims  
14 against Individual Defendants. (*Id.* at pp. 18-19.) Among other factors, the Court  
15 observed that Plaintiffs' claims "consider matters that have been deemed of great  
16 concern to local governments and media outlets" and recognized that "there is  
17 already a co-pending action in state court." (*Id.* at p. 19.) Ultimately, the Court  
18 declined supplemental jurisdiction in favor of resolution of the state law claims in  
19 state court. (*Id.*)

20 On February 20, 2018, the Court entered Judgment in favor of City  
21 Defendants. (Dkt. 548.) The Court did *not* award costs to Individual Defendants,  
22 including Defendant Blakeman. (*Id.*)

23 **D. The State Court Lifted The Stay To Allow Plaintiffs To Amend Their**  
24 **State Court Complaint To Allege The Claims That This Court Declined**  
25 **To Hear**

26 On March 12, 2018, at Plaintiffs' request, the state court lifted the stay of the  
27 state court action to allow Plaintiffs to amend their complaint. (Pooley Dec., ¶ 5.)  
28 Plaintiffs intend to file an amended complaint in the state court action to add the  
state claims against the individual defendants over which the federal court declined  
to exercise supplemental jurisdiction. (*Id.*)

**E. Defendant Blakeman Filed An Improper Application To Tax Costs And A Motion For Costs**

On March 6, 2018, Defendant Blakeman filed the instant motion, requesting that the Court award him costs pursuant to 28 U.S.C. section 1919. (Dkt. 554.) In his motion, Defendant Blakeman did not claim to be a prevailing party entitled to costs under Rule 54(d) of the Federal Rules of Civil Procedure. Nor did he request that the Court determine that he is a prevailing party, as allowed by Local Rule 54-1, which provides that: "When a case is dismissed or otherwise terminated voluntarily, the Court may, upon request, determine the prevailing party."<sup>1</sup>

Also on March 6, 2018, Defendant Blakeman filed an Application to the Clerk to Tax Costs. (Dkt. 555.) On March 9, 2018, Plaintiffs timely filed Objections to Defendant's Costs Application. (Dkt. 558.) Disregarding Court Rules, Defendant Blakeman did not file a timely response. *See* L.R. 54-2.3 (providing that party applying for costs has three days to respond to filed objections). Rather, on March 16, 2018, without offering any excuse or explanation, he filed his Response to Plaintiffs' Objections – four (4) days after the deadline. (Dkt. 560.)

**III. RELEVANT FACTS**

**A. Plaintiffs Filed This Civil Rights Case In Federal Court To Overcome The Systemic Localism And Exclusion At Lunada Bay**

Plaintiffs brought this civil rights action to secure lawful, safe, and secure access to Lunada Bay for all visitors to the City of Palos Verdes Estates. (Dkt. 545, p. 3.) They did so in the face of systemic localism and exclusion. (*Id.* at p. 6.) For example, a City Community Services Officer admitted that the Lunada Bay Boys

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<sup>1</sup> Defendant Blakeman's filing of his costs motion under Section 1919 and not under Rule 54(d) is consistent with his counsel's repeated statements, during the parties' meet-and-confer discussion before he filed the motion, that he was not claiming to be entitled to costs as a prevailing party. (*See* Pooley Dec., ¶ 6.)

1 did not want outsiders using Lunada Bay and that if an outsider is "uncomfortable,  
2 you know, then don't do it." (*Id.* at p. 7.) As further example, a City resident stated  
3 that many residents "like it segregated" and "do not want people coming to our  
4 neighborhood." (*Id.* at p. 6.)

5 Plaintiff Cory Spencer grew up in southeast Los Angeles County – more than  
6 20 miles to the nearest surfing beach – and has surfed for over 30 years. Plaintiff  
7 Spencer has been employed by the City of El Segundo as a police officer for 18  
8 years. (Dkt. 159-4, ¶¶ 1, 2.) He drove past Lunada Bay approximately 8-10 times  
9 over the course of several decades but was always too fearful of becoming a victim  
10 of localism to surf there. (*Id.* at ¶ 5.) He finally mustered the courage in January  
11 2016 to surf at Lunada Bay, only to be harassed and attacked by Bay Boys,  
12 including Defendant Blakeman. (*See, e.g., id.* at ¶¶ 8, 12-16.) He brought this case  
13 to "gain public access and to stop the culture of bullying." (Pooley Dec., ¶ 8, Ex. F,  
14 33:13-18.) To him, this case is about:

15 public access and not being unwelcome or not being harassed when you  
16 go [to Lunada Bay] to enjoy the earth, you know, the ocean. It's about  
17 anybody who wants to use that part of the coastline to be able to go use  
it without being bullied and have their stuff destroyed and be injured.  
That's what it's about. (*Id.* at 37:3-11.)

18 Plaintiff Diana Reed is an avid beachgoer and first learned to surf in 2014.  
19 (Dkt. 159-5, ¶¶ 1, 5.) Being a relative newcomer to surfing, Ms. Reed did not know  
20 what to expect in terms of experiencing localism at Lunada Bay. (*Id.*) Ms. Reed  
21 visited Lunada Bay on several occasions in January and February 2016, and was  
22 harassed by Bay Boys, called names, assaulted and battered. (*Id.* at ¶¶ 8-27.) In  
23 bringing this lawsuit, she was "seeking first and foremost public access to Lunada  
24 Bay for all beachgoers." (Pooley Dec., ¶ 7, Ex. E, 89:14-16.) She hoped that:

25 anyone from any race, any ethnicity, any, you know – any level of  
26 income, just anyone should be able to go there without being harassed,  
27 without being scared, without feeling that they're being intimidated,  
without being videotaped by everyone, being told that you're not  
welcome. (*Id.* at 90:10-18.)

1 Plaintiff Coastal Protection Rangers, Inc., (CPR) is a non-profit public benefit  
2 corporation whose mission is dedicated to ensuring public access to the California  
3 coast. (Dkt. 329, at No. 3.) Beach access is central to CPR's mission. (*Id.* at No. 7.)  
4 CPR has diverted resources to achieve open access for all at Lunada Bay, and if it  
5 were not for the illegal exclusivity by the Bay Boys, these resources could be used  
6 for other important CPR projects related to coastal access. (*Id.* at No. 11.)

7 **B. Defendant Blakeman Is A Lunada Bay Boy Who Perpetuates The**  
8 **Localism At Lunada Bay**

9 Defendant Blakeman participated in the harassment of Plaintiff Reed and  
10 filmed his and Defendant Johnston's interactions with Ms. Reed at close range.  
11 (Dkt. 329, at No. 73 [referencing Reed Dep. at 170:12-171:5].) Defendant  
12 Blakeman also used his camera to harass and intimidate Plaintiff Spencer and his  
13 group of visitors while on the bluffs at Lunada Bay. (*Id.* at No. 67 [referencing  
14 Spencer Dep. at 144:21-25], No. 70 [referencing Spencer Dep. at 259:24-260:24].)

15 **C. After Defendant Blakeman Obstructed Basic Discovery, The Court**  
16 **Granted Plaintiffs' Motion To Compel And Their Subsequent Motion**  
**For Sanctions**

17 **1. The Court Granted Plaintiffs' Motion To Compel Defendant**  
18 **Blakeman To Produce His Videos And Photographs Taken At**  
**Lunada Bay**

19 Early during discovery in this matter, Plaintiffs served Defendant Blakeman  
20 with a request for the production of videos and photographs taken at Lunada Bay.  
21 (Dkt. 183, at 2:1-2 & Ex. 1-c.) Defendant Blakeman refused to produce these items  
22 before his November 2016 deposition, but confirmed during his deposition that he  
23 possessed approximately 10 memory cards containing video footage of Lunada Bay.  
24 (*Id.* at 2:3-10 & Exs. 1-d and 1-f [Blakeman Dep. at 17:12-24; 18:7-23; 26:10-11;  
25 25:3-10, 25; 26:1-2].)

26 After his deposition, Defendant Blakeman maintained his refusal to produce  
27 his memory cards with videos and photographs of Lunada Bay. On January 4, 2017,  
28 after extensive (and costly) meet-and-confer efforts by Plaintiffs' counsel, the parties

1 submitted a Joint Statement regarding Plaintiffs' motion to compel Blakeman's  
2 production of these materials. (Dkt. 183.)

3 On January 25, 2017, the Court ordered Defendant Blakeman to produce all  
4 of his photos and videos of Lunada Bay and people surfing Lunada Bay from  
5 December 2013 to the present. (Dkt. 212, at 3.) The Order required the parties to  
6 meet and confer regarding: (1) selection of a third-party forensic examiner or  
7 expert, (2) a protocol to describe the procedure for the forensic examiner to follow,  
8 and (3) a timeline for the work to occur. (*Id.*) Contrary to Defendant Blakeman's  
9 assertion (*see* Dkt. 554 at 7:15-16), he selected the third-party forensic examiner.  
10 (Dkt. 231 at 2:11-12 ("Defendant Blakeman has selected San Diego Digital  
11 Forensics as the third-party forensic expert"); *see also* Dkt. 228 at 2:17-18  
12 (Defendant Blakeman's Proposed Order Regarding Plaintiffs' Motion to Compel  
13 Production, indicating that "Defendant Blakeman has selected San Diego Digital  
14 Forensics as the third-party forensic expert."). The Court also ordered that  
15 "**Defendant Blakeman** shall bear the cost of the third party vendor."<sup>2</sup> (Dkt. 231 at  
16 4:9-10, emphasis in original.)

17 **2. The Court Sanctioned Defendant Blakeman After Finding That He**  
18 **Violated Rule 37(e) By Losing Or Destroying Evidence**

19 On April 14, 2016, Defendant Blakeman was served with the Complaint.  
20 (Dkt. 15.) In June 2016, he received a document preservation letter and, at the  
21 parties' Rule 26(f) meeting on August 5, 2016, he was warned (through counsel)  
22 that e-discovery, including texts stored in phones, would be relevant and critical to  
23 Plaintiffs' claims. (Dkt. 538, at 6:6-15.) Plaintiffs also cautioned Defendants'  
24 attorneys that their clients may be inclined to destroy evidence. (*Id.*)

25 In September 2016, Plaintiffs served Defendant Blakeman with a Request for  
26

27 <sup>2</sup> Although Plaintiff testified that he had approximately 10 memory cards containing  
28 Lunada Bay images, when ordered to produce them, he actually turned over 30  
memory cards to the forensics vendor. (Pooley Dec., ¶ 3, Ex. A.)

1 Production of Documents. (*Id.*) Simultaneously, Plaintiffs served similar document  
2 requests on the other Individual Defendants. Review of Defendant Lee's cellular  
3 phone records indicated Defendant Blakeman had exchanged at least four text  
4 messages with Defendant Lee, but neither of them had produced those texts in  
5 discovery (despite a request for production seeking this information). (*See id.* at  
6 8:8-11, 12:8-10.) Plaintiffs also received Defendant Papayans' cellular phone  
7 records, which included a number of previously unproduced text messages received  
8 by Defendant Blakeman that were related to Plaintiffs' allegations. (*Id.* at 9:10-14.)

9       Upon discovering that Defendant Blakeman had failed to produce a number  
10 of relevant text messages, Plaintiffs filed a motion for sanctions under Rule 37(e) of  
11 the Federal Rules of Civil Procedure. The Court granted the motion, having  
12 determined that "the text messages at issue constitute evidence that should have  
13 been preserved under Rule 37(e)." (Dkt. 538, at 13:3-11.) The Court found that the  
14 missing messages were likely to contain relevant messages because other text  
15 messages exchanged between codefendants and recovered from other sources  
16 contained relevant communications. (*Id.*) The Court further determined that "the  
17 contents of the text messages at issue were lost because Defendant Blakeman failed  
18 to take reasonable steps to preserve them." (*Id.* at 18:26-28.) Indeed, the Court  
19 found that Blakeman failed to take *any* steps to preserve his text messages. (*Id.* at  
20 19:10-11.) Accordingly, the Court imposed monetary sanctions on Defendant  
21 Blakeman, permitted further discovery on the subject of spoliation, and held that  
22 Plaintiffs would be permitted to present evidence and argument at trial on the  
23 subject of his spoliation.<sup>3</sup> (*Id.* at 23-24; *see also* Dkt. 544, at 4-5.)

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26 <sup>3</sup> In granting the motion, the Court rejected Defendant Blakeman's spurious  
27 argument that Plaintiffs should be sanctioned under Rule 11 for filing their motion.  
28 (Dkt. 538, 544.)



IV. ARGUMENT

A. The Court Should Deny Defendant Blakeman's Untimely Motion Due To His Failure To Follow Court's Rules

Even as Defendant Blakeman seeks an award of costs on an *equitable* basis, he flouts this Court's rules. To start, his motion is untimely. Pursuant to Local Rule 54-11, Defendant Blakeman had 14 days from the date Judgment was entered in which to file a motion for costs under 28 U.S.C. section 1919. This Court entered Judgment in this matter on February 20, 2018. (Dkt. 548.) Thus, Defendant Blakeman had until March 6, 2018 to file his costs motion.

Defendant Blakeman failed timely to file his motion. This Court's Standing Order provides: "The deadline to e-file a document is 4:00 p.m.; any document e-filed after 4:00 p.m. will be deemed filed on the next court day." (Dkt. 9, p. 2; January 11, 2017, Revised CV Standing Order for Judge S. James Otero, Ex. A, p. A-2.) Defendant Blakeman e-filed the instant motion on March 6, 2018, at 4:20 p.m. (Dkt. 554.) Because Defendant Blakeman e-filed his motion after 4:00 p.m. on March 6, 2018, it is deemed filed on March 7, 2018. Thus, his costs motion is untimely under Local Rule 54-11.

Additionally, Defendant Blakeman failed to comply with Local Rule 7-3, which requires parties to meet and confer about contemplated motions at least seven (7) days prior to the filing of the motion. (L.R. 7-3.) This Court's Standing Order provides: "Filings not in compliance with L.R. 7-3 will be denied." (Dkt. 9, p. 10; January 11, 2017, Revised CV Standing Order for Judge S. James Otero, Ex. A, p. A-11.)

On Friday afternoon, March 2, 2018, at 2:47 p.m., Defendant Blakeman's counsel requested a meet and confer discussion about a contemplated motion for costs. (Pooley Dec., ¶ 6, Ex. C.) On Tuesday, March 6, 2018, counsel for Defendant Blakeman and Plaintiffs discussed the contemplated motion (Pooley Dec., ¶ 6.) Later that same afternoon, Defendant Blakeman e-filed his motion for

1 costs. (Dkt. 554.) Thus, Defendant Blakeman did not meet and confer with  
2 Plaintiffs about his contemplated motion seven (7) days in advance of filing his  
3 costs motion. Indeed, he did not even *request* a meet-and confer discussion with  
4 Plaintiffs seven (7) days prior to filing his motion.

5 Given Defendant Blakeman's failures to file a timely motion and to comply  
6 with the Local Rules, the Court should deny his motion.

7 **B. Even If The Court Considers His Motion, It Would Be Unfair And**  
8 **Inequitable To Award Costs To Defendant Blakeman**

9 The Court should exercise its discretion not to award costs to Defendant  
10 Blakeman following its declination to exercise supplemental jurisdiction over  
11 Plaintiffs' state law claims. Pursuant to 28 U.S.C. section 1919: "Whenever any  
12 action or suit is dismissed in any district court, the Court of International Trade, or  
13 the Court of Federal Claims for want of jurisdiction, such court *may* order the  
14 payment of just costs." 28 U.S.C. section 1919 (emphasis added). Unlike an award  
15 of costs under Rule 45(d) of the Federal Rules of Civil Procedure and 28 U.S.C.  
16 section 1920, there is no presumption that costs will be awarded under 28 U.S.C.  
17 section 1919. *See Otay Land Co. v. United Enterprises Ltd.*, 672 F.3d 1152, 1157  
18 (9th Cir. 2012) (stating that under Section 1919, costs should not be presumed solely  
19 because they were incurred); *Hygienics Direct Co. v. Medline Industries, Inc.*, 33 F.  
20 App'x. 621 (3d Cir. 2002) (recognizing that there is no presumption that costs will  
21 be awarded under Section 1919). Thus, district courts have discretion whether or  
22 not to award costs when an action is dismissed for lack of jurisdiction.

23 Determining whether to award costs under Section 1919 involves a two-step  
24 analysis: (1) whether an award of costs is just and equitable and (2) if so, the  
25 appropriate amount of costs. *Otay Land Co.*, 672 F.3d at 1157. In deciding whether  
26 to make an award of costs under Section 1919, a district court "should consider what  
27 is most fair and equitable under the totality of the circumstances." *Id.* District  
28 courts may consider a number of factors. *Id.*



1 As the Ninth Circuit instructs, the "most important" consideration is that  
2 Section 1919 "stands in stark contrast to costs under Rule 54(d)," which carries a  
3 presumption that costs will be awarded. *Id.* The mere fact that courts have the  
4 authority to award costs when a case is dismissed for lack of jurisdiction "does not  
5 mean that costs are mandated." *Id.* at 1158. District courts also may consider:  
6 (a) the role played by exigent circumstances, such as hardship or culpable behavior  
7 by the parties; (b) the strength of the plaintiff's jurisdictional claim; and (c) the  
8 significance of pending parallel litigation in state court. *Id.* at 1158-59.

9 Under the totality of circumstances in this case, it would be unfair and  
10 inequitable to award costs to Defendant Blakeman.

11 **1. The Court Should Not Award Costs To Defendant Blakeman**  
12 **Because He Is Not A Prevailing Party**

13 Most significantly, Defendant Blakeman did not contend in his motion that he  
14 is a prevailing party, nor did he request that the Court determine that he is a  
15 prevailing party pursuant to Local Rule 54-1. (Dkt. 554.) Presumably Defendant  
16 Blakeman did not request that the Court determine that he is the prevailing party  
17 because he has not prevailed in any sense. He has not received a decision in his  
18 favor on the merits or any relief from the Court. *See Buchanan Bd. and Care*  
19 *Homes v. West Virginia Dept. of Health and Human Services*, 532 U.S. 598, 603-04  
20 (2001) (defining a prevailing party as one who has been awarded some relief from  
21 the court, such as an enforceable judgment on the merits or a court-ordered consent  
22 decree, which creates a "material alteration of the legal relationship of the parties").

23 Moreover, Local Rule 54-1 provides:

24 The prevailing party is entitled to reasonable costs incurred during the  
25 proceedings. **No costs are allowed unless a party qualifies as, or is**  
26 **determined by the Court to be, the prevailing party.** (Local Rule  
54-1.)

27 (Central District *Bill of Costs Handbook* (2017), p. 1, emphasis added.)

28 Because Defendant Blakeman is not a prevailing party, the Court should

1 exercise its discretion to not award him costs.<sup>4</sup> *Otay Land Co.*, 672 F.3d at 1157.

2       **2. The Exigent Circumstances Of This Case Weigh Against Awarding**  
3       **Defendant Blakeman Costs**

4       **a. A Cost Award To Defendant Blakeman Is Not Warranted In**  
5       **This Important Civil Rights Action**

6       As this Court recognized, Plaintiffs brought this civil rights action to secure  
7 lawful, safe, and secure access to Lunada Bay for all visitors to the City of Palos  
8 Verdes Estates (the "City"). (Dkt. 545, p. 3.) They did so in the face of systemic  
9 localism and exclusion. (*Id.* at p. 6.) For example, a City Community Services  
10 Officer admitted that the Lunada Bay Boys did not want outsiders using Lunada Bay  
11 and that if an outsider is "uncomfortable, you know, then don't do it." (*Id.* at p. 7.)  
12 As further example, a City resident stated that many residents "like it segregated"  
13 and "do not want people coming to our neighborhood." (*Id.* at p. 6.) This Court  
14 further recognized that Plaintiffs' claims in this case "consider matters that have  
15 been deemed of great concern to local governments and media outlets." (*Id.* at  
16 p. 19.)

17       In important civil rights cases, such as this, the Ninth Circuit has found cost  
18 awards not warranted - even where the defendant was a prevailing party. *See*  
19 *Stanley v. Univ. of S. California*, 178 F.3d 1069, 1079 (9th Cir. 1999) (finding that  
20 district court abused its discretion when failing to re-tax costs of \$46,710.97  
21 awarded to defendants, in part, because of the "chilling effect of imposing such high  
22 costs on future civil rights litigants"); *Association of Mexican-American*

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23       <sup>4</sup> In his Response to Plaintiffs' Objections to his Application to the Clerk to Tax  
24 Costs, Defendant Blakeman belatedly requested that the Court determine that he is a  
25 prevailing party. (Dkt. 560.) Such a request was not made in this motion and  
26 cannot be raised for the first time on reply. Even if Defendant Blakeman attempts to  
27 change the basis of his motion on reply and the Court considers it, however, such a  
28 request should be denied because he has not obtained an enforceable judgment on  
the merits or a court-ordered consent decree such that there has been a material  
alteration of the legal relationship of the parties. *See Buchanan, supra*, 532 U.S. at  
603-04.

1 *Educators v. State of California*, 231 F.3d 572 (9th Cir. 2000) (finding district court  
2 did not abuse its discretion in refusing to award costs to prevailing defendant in civil  
3 rights action). An award of costs especially is not warranted where, as here,  
4 Plaintiffs (two individuals and a non-profit organization) have limited financial  
5 resources.<sup>5</sup> *Stanley*, 178 F.3d at 1079 (stating that district courts "should consider  
6 the financial resources of the plaintiff and the amount of costs in civil rights cases").

7 There is no question that Plaintiffs' action against Defendant Blakeman raised  
8 important questions and that these questions have not been answered yet. As the  
9 Ninth Circuit appreciates: "Without civil rights litigants who are willing to test the  
10 boundaries of our laws, we would not have made much of the progress that has  
11 occurred in this nation since *Brown v. Board of Educ.*, 347 U.S. 483, 74 S.Ct. 686,  
12 98 L.Ed. 873 (1954)." *Id.* at 1080. To avoid a chilling effect on future civil rights  
13 litigants and especially given that Plaintiffs' claims have not been decided on the  
14 merits yet, the Court should exercise its discretion to deny a costs award to  
15 Defendant Blakeman.

16 **b. Defendant Blakeman's Culpable Behavior Makes An Award**  
17 **Of Costs To Him Unjust**

18 Moreover, notwithstanding Defendant Blakeman's unwarranted attacks on  
19 Plaintiffs and their counsel,<sup>6</sup> he ignores his own behavior that led to this lawsuit, as  
20 well as his behavior during the course of this litigation. As discussed above,  
21 Defendant Blakeman contributes to the localism and the harassment of visitors to  
22 \_\_\_\_\_

23 <sup>5</sup> Ms. Reed is unemployed. (Pooley Dec., ¶ 7, Ex. E at 23:12-13.)

24 <sup>6</sup> During her deposition in this matter, Ms. Reed learned that she had been sued for  
25 fraud in connection with her ex-husband's business dealings and was unaware of any  
26 judgment entered against her for fraud. (Dkt. 214, Ex. 2, pp. 198:25-200:23.) See  
27 also Pooley Dec., ¶ 1 (declaring that Plaintiffs' counsel are handling this matter on a  
28 pro bono basis). Plaintiffs' also object to the alleged statement of Plaintiffs' counsel  
Victor Otten, provided in Richard Dieffenbach's Declaration at page 9, lines 19-20,  
on the grounds that it is inadmissible hearsay. (Dkt., 554; F.R.E. 801.)

1 Lunada Bay. (Dkt. 329, at No. 73 [referencing Reed Dep. at 170:12-171:5]; No. 67  
2 [referencing Spencer Dep. at 144:21-25] No. 70 [referencing Spencer Dep. at  
3 259:24-260:24].) Further, Defendant Blakeman required a Court Order to compel  
4 his compliance with basic discovery requests and attendance at his own deposition.  
5 (Dkts. 141, 183, 212, 231.) Thereafter, the Court sanctioned Defendant Blakeman  
6 for violating Rule 37(e) of the Federal Rules of Civil Procedure, after he lost or  
7 destroyed relevant discovery in the form of text messages between the individual  
8 defendants. (Dkt. 538, 544.) Thus, Defendant Blakeman's culpable and  
9 obstructionist behavior makes an award of costs to him unjust.

10 Given the challenges to Plaintiffs in bringing this important civil rights action  
11 and Defendant Blakeman's wrongful behavior, the Court should not award him  
12 costs.

13 **3. Plaintiffs' Proper Invocation Of Federal Jurisdiction Militates**  
14 **Against An Award Of Costs To Defendant Blakeman**

15 Plaintiffs properly invoked federal jurisdiction over their state law claims at  
16 the outset of this case. In their initial complaint, Plaintiffs alleged the Equal  
17 Protection Claim, the P&I Claim, and the Coastal Act Claim against City  
18 Defendants. (Dkt. 39-2.) Plaintiffs also alleged the Bane Act Claim, Nuisance  
19 Claim, Coastal Act Claim, Assault Claim, Battery Claim, and Negligence Claim  
20 against Individual Defendants. (*Id.*) The Court agreed that admiralty jurisdiction  
21 was proper over Plaintiffs' state law tort claims against Individual Defendants and  
22 that supplemental jurisdiction also existed over these state law claims. (Dkt. 88,  
23 pp. 5-9.)

24 Only recently when granting summary judgment to the City, which was after  
25 the denial of class certification and a narrowing of issues and evidence presented,  
26 the Court concluded that it did not have admiralty jurisdiction over Plaintiffs' state  
27 law claims. (Dkt. 545, p. 18.) At the same time, the Court found it a "more difficult  
28 question" whether it should exercise supplemental jurisdiction over Plaintiffs' state

1 law claims against the individual defendants. (*Id.* at 18-19.) Ultimately, the Court  
2 declined supplemental jurisdiction in favor of resolution of the claims in state court.  
3 (*Id.*) Thus, the Court never found that it *lacked* federal jurisdiction over Plaintiffs'  
4 state law claims. Rather, after dismissing the federal claim it made a discretionary  
5 decision not to exercise the supplemental jurisdiction it unquestionably had.

6 Accordingly, Plaintiffs properly invoked federal jurisdiction over their claims  
7 and Defendant Blakeman should not be awarded costs. *See Otay Land Co.*, 672  
8 F.3d at 1158 (stating "the driving motivation behind § 1919 is to balance the need to  
9 deter improper or wrongful invocations of federal jurisdiction against the  
10 importance of providing a federal forum for actions that fulfill the 'statutory criteria'  
11 for jurisdiction."); *Hygienics Direct Co.*, 33 F. App'x. 621 (affirming denial of costs  
12 to defendants because the plaintiff had "plausible grounds for asserting the existence  
13 of federal jurisdiction" and had not acted in a "vexatious or frivolous" manner).

14 **4. Costs Can And Should Be Awarded At The Conclusion Of The**  
15 **Pending State Court Action**

16 As the Court recognized when dismissing the state law claims against  
17 Defendant Blakeman, there is a "co-pending action in state court" that will resolve  
18 Plaintiffs' claims against Defendants. (Dkt. 545, p. 19.) Thus, it would be  
19 premature and speculative to award costs to Defendant Blakeman under Section  
20 1919. *See Callicrate v. Farmland Indus., Inc.*, 139 F.3d 1336 (10th Cir. 1998).

21 In *Callicrate*, cited by Defendant Blakeman, the district court dismissed the  
22 action due to lack of diversity between the parties and the plaintiff refiled the same  
23 claims in state court against two of the three defendants. *Id.* at 1342. The Court of  
24 Appeals vacated the award of costs, concluding that because the merits of the case  
25 remained in active litigation between the parties in state court, an award of costs  
26 under Section 1919 was "speculative and premature." *Id.* The appellate court noted  
27 that such an award would prove improper if plaintiff prevailed against defendants on  
28 the merits of the claims. *Id.*

1 As in *Callicrate*, the Court should not make a cost award to Defendant  
2 Blakeman because the merits of the controversy between Plaintiffs and Defendant  
3 Blakeman will be decided in the pending state court action. Costs will be awarded  
4 to the prevailing party in the state court.

5 **C. In Any Event, The Court Should Not Award Defendant Blakeman**  
6 **Expenses That Are Not Recoverable As "Costs"**

7 Should the Court decide to award Defendant Blakeman any costs, Plaintiffs  
8 respectfully request that the amount awarded be significantly reduced from what  
9 Defendant seeks.

10 At a minimum, Plaintiffs request that the Court not award \$12,347.20 of the  
11 costs sought by Defendant Blakeman in his improper Application to the Clerk to  
12 Tax Costs (Dkt. 555), because they are not recoverable under 28 U.S.C. section  
13 1920. (*See* Dkt. 558.) As Defendant Blakeman observes at page 5 of his Opening  
14 Memorandum, most courts look to 28 U.S.C. section 1920 to determine what costs  
15 are "just" under Section 1919. *See, e.g., Callicrate*, 139 F.3d at 1339 (stating that  
16 the standards applied under Section 1920 are helpful when determining what costs  
17 are "just" under Section 1919). Specifically, Plaintiffs object to the following costs:

18 **1. \$1,435.00 for filing fees (Dkt. 555, p. 1.)**

19 Defendant Blakeman failed to attach any documentation supporting this  
20 requested cost, as required, and admits he has no documentation of this cost. *See*  
21 Central District's *Bill of Costs Handbook* (2017), p. 1; Dieffenbach Dec., Dkt. 554 at  
22 ¶ 2 ("A first filing fee was incurred by Mr. Cooper's office in the amount of  
23 \$1435.00 in this matter; I do not have the invoice for that payment."). Notably, this  
24 Court's Schedule of Fees does not list *any* filing fees to file an Answer or a Motion.  
25 *See* [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov).

26 It appears that Defendant Blakeman is not providing the invoice because he  
27 improperly is attempting to recover his filing fees from the state court action  
28 between the parties. (*See* Pooley Dec., ¶ 4.) The state court charges a \$435.00 fee



1 for responsive pleadings and a \$1,000 fee for cases deemed complex. *See*  
2 [www.lacourt.org/forms/fees](http://www.lacourt.org/forms/fees). The state court has designated the pending case  
3 between the parties as complex. (*See* Pooley Dec., ¶ 4, Ex. B.)

4 **2. \$8,584.99 for forensics work (Dkt. 555, pp. 27-29.)**

5 This expense is not recoverable under Local Rule 54 or Rule 54 of the Federal  
6 Rules of Civil Procedure. Defendant Blakeman seeks to rely on Local Rule 54-3.12  
7 (Dkt. 555, p. 1), but forensic work is not listed as a taxable cost under this Rule. *See*  
8 L.R. 54-3.12 (listing the following as items that may be taxed as costs if ordered by  
9 the Court: (i) various visual aids reasonably necessary to assist the jury or the Court  
10 in understanding the issues at trial; (ii) photographs, if admitted in evidence or  
11 attached to documents necessarily filed and served upon the opposing party; and  
12 (iii) the cost of models).

13 Moreover, Defendant Blakeman incurred this expense after he lost a motion  
14 to compel discovery and the Court expressly ordered that Defendant Blakeman  
15 "shall bear the cost of the third party vendor." (Dkt. 212, p. 3; Dkt. 231, p. 4.) Had  
16 Defendant Blakeman properly complied with the initial discovery requests, the  
17 Court would not have needed to direct his compliance.

18 **3. \$755.04 for reporter's transcripts**

19 **a. \$312.18 (Dkt. 555, p. 49.)**

20 **b. \$422.86 (Dkt. 555, p. 50.)**

21 Defendant Blakeman has not specified this cost such that the nature of the  
22 claim can be readily understood, as required by the Central District's *Bill of Costs*  
23 *Handbook* (2017) at page 1. He has not indicated the types of hearings from which  
24 the transcripts were prepared. Most significantly, he has not established, and cannot  
25 establish, that these transcripts were either requested by the Court or prepared  
26 pursuant to a stipulation among the parties. As such, this expense cannot be taxed.  
27 L.R. 54-3.4; Central District's *Bill of Costs Handbook* (2017), p. 1.

28 ///

1           **4.     \$1,283.75 for videotapes of depositions**

2                 **a.     \$258.75     Diana Milena Reed     (Dkt. 555, p. 33.)**

3                 **b.     \$252.50     Diana Milena Reed     (Dkt. 555, p. 36.)**

4                 **c.     \$772.50     Brant Blakeman         (Dkt. 555, p. 37.)**

5           Defendant Blakeman has not shown, and cannot show, that the Court ordered  
6 these depositions to be videotaped. Thus, these expenses are not recoverable. *See*  
7 Central District's *Bill of Costs Handbook* (2017) at page 1 (stating that: "The costs  
8 of the original deposition and one copy used for any purpose in the case are  
9 recoverable as taxable costs, but not the cost of videotaped or recorded depositions  
10 unless ordered by the Court." (emphasis in original)).

11           **5.     \$288.42 for expedited deposition transcript of Angelo Ferrara**  
12                 **(Dkt. 555, p. 31.)**

13           Defendant Blakeman has not shown, and cannot show, that the Court ordered  
14 him to obtain an expedited transcript of Angelo Ferrara's deposition. Thus, this  
15 expense is not recoverable. *See* Central District's *Bill of Costs Handbook* (2017),  
16 p. 2 (stating: "Expedited rates are not allowable unless ordered by the Court"); L.R.  
17 45-3.5 (listing non-expedited transcripts as recoverable costs).<sup>7</sup>

18           Accordingly, if the Court decides to award costs to Defendant Blakeman, at  
19 least \$12,347.20 of the expenses he seeks should not be awarded. Even a prevailing  
20 party would not be entitled to have these costs taxed.

21         ///

22         ///

23 \_\_\_\_\_  
24 <sup>7</sup> In his untimely Response to Plaintiffs' Objections to his Application to the Clerk to  
25 Tax Costs, Defendant Blakeman admits that certain of the costs he sought "should  
26 not have been included." (Dkt. 560, p. 4.) His attorney vaguely explains that the  
27 error occurred due to "mis-communication [*sic*]" (*id.*), a fairly cavalier statement  
28 given that he swore under penalty of perjury that the costs listed on the application  
were "correct." (Dkt. 555, p. 1.) Moreover, Defendant Blakeman failed to amend  
his costs motion to withdraw the improper costs.



**V. CONCLUSION**

For all of the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant Blakeman's costs motion. If the Court determines to award costs to Defendant Blakeman, Plaintiffs request that the Court award significantly less than what Defendant Blakeman seeks.

DATED: March 19, 2018

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